SUPREME COURT, U. S.

APR 9 1958

JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 435

FEDERAL TRADE COMMISSION,
Petitioner,
vs.
NATIONAL CASUALTY COMPANY,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL CASUALTY COMPANY

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INDEX

	Page
Question Presented	1
Statement of the Case	2
Summary of Argument	2
Argument:	
Under the McCarran-Ferguson Act the Federal Trade Commission Act is not applicable to the business of insurance in those States which have enacted laws regulating unfair and deceptive practices of insurance companies	4
I. The proviso in Section 2(b) of the McCarran-Ferguson Act cannot properly be construed, as contended by the Petitioner, to mean that the Federal Trade Commission Act shall be applicable to the business of insurance in States in which such business is fully regulated by State law if such law is not in conflict with the Federal Trade Commission Act	5
A. Language and Purpose of the McCarran-Ferguson Act	5
B. The Petitioner's Theory of Dual Control Would Inevitably Result in Conflict Between State and Federal Agencies and Would Impair State Regulation	9
II. The proviso in Section 2(b) of the McCarran-Ferguson Act cannot properly be construed, as contended by the Petitioner, to mean that the Federal Trade Commission Act shall not be made inapplicable by the mere enactment of State regulatory laws pertaining to unfair and deceptive prac-	

Page

tices of insurance companies, but shall remain applicable until the State law is applied and enforced in a particular situation by the entry of an order adjudicating the matter 15

A. Language and Purpose of the McCarran-Ferguson Act 16

B. There Is No Legal Vacuum Under the State Regulatory Laws So Far As Respondent is Concerned 18

Conclusion 21

CITATIONS

Cases:

Federal Trade Commission v. Rubberoid Co., 343 U. S. 470 10

Garner v. Teamsters, Chauffeurs & Helpers, Etc., 346 U. S. 485 12

Maryland Casualty Co. v. Cushing, 347 U. S. 409 13

Miley v. John Hancock Mutual Life Insurance Co., 148 F. Supp. 299, affirmed *per curiam*, 242 F. 2d 758, cert. denied, 355 U. S. 828 9

New York Life Insurance Co. v. Deer Lodge County, 231 U. S. 495 4

North Little Rock Transportation Co. v. Casualty Reciprocal Exchange, 181 F. 2d 174, cert. denied, 340 U. S. 823 9

Osaka Shosen Kaisha Line v. United States, 300 U. S. 98 17

Paul v. Virginia, 8 Wall. 168 4

Prudential Insurance Co. v. Benjamin, 328 U. S. 408 13

Southern Railway Co. v. Reid, 222 U. S. 424..... 20
United States v. South-Eastern Underwriters Ass'n, 322 U. S. 533.....4, 5, 14, 19
Wilburn Boat Co. v. Fireman's Fund Insurance Co., 348 U. S. 310..... 14

Statutes:

Federal Trade Commission Act, 15 U. S. C. 41-58 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18
Federal Power Act, 16 U. S. C. 791-825r..... 14, 15
McCarran-Ferguson Act, 15 U. S. C. 1011-1015.. 5, 6, 7, 9, 11, 13, 14, 15, 16, 17, 19, 20
Natural Gas Act, 15 U. S. C. 717-717w..... 14, 15

Miscellaneous:

91 Cong. Rec. 1442..... 17
91 Cong. Rec. 1443..... 9, 17
91 Cong. Rec. 1481..... 8

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QUESTION PRESENTED

UNDER THE McCARRAN-FERGUSON ACT IS THE FEDERAL TRADE COMMISSION ACT APPLICABLE TO THE BUSINESS OF INSURANCE IN THOSE STATES WHICH HAVE ENACTED LAWS REGULATING UNFAIR AND DECEPTIVE PRACTICES OF INSURANCE COMPANIES?

STATEMENT OF THE CASE

The Petitioner's statement of the material facts is accurate except that it fails to state that Respondent, National Casualty Company, is licensed to do business in each of the States in which it sells insurance and that all local agents through whom all of Respondent's insurance is sold are licensed under the insurance laws of the particular State in which they engage in business (N. R. 22, 32).

SUMMARY OF ARGUMENT

In 1944 a decision of this Court holding that insurance was commerce and therefore when it crossed the State line was interstate commerce, cast doubt on the system which the States had built up over a period of many years for the regulation of insurance free from interference by the Federal government. Congress promptly passed the McCarran-Ferguson Act restoring this authority to the States, placing a three-year moratorium on the operation of certain Federal Acts, including the Federal Trade Commission Act, ordinarily applicable to interstate commerce, so that any States which had not already done so would have an opportunity to enact laws regulating the matters covered thereby, and also provided that at the end of the moratorium period the Federal Trade Commission Act and the other named Acts "shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

The lower Court has held that in the States which have enacted laws regulating unfair and deceptive prac-

tices of insurance companies the Federal Trade Commission Act which deals with the same subject is inapplicable.

The Petitioner concedes that under the above quoted proviso the Federal Trade Commission Act would be inapplicable in the event of a conflict with State laws, but says that the McCarran-Ferguson Act did not intend to make the Federal Trade Commission Act inapplicable where there is no conflict with the State law, but rather intended that there would be a dual control in this area of the insurance business by both the Federal and State agencies.

Petitioner also claims that Congress did not intend that the States could acquire exclusive authority to regulate deceptive and unfair practices of insurance companies by merely enacting laws regulating such practices, but on the contrary intended that the Federal Trade Practices Act would remain applicable until such time as the several States took formal action under their laws pertaining to the particular transaction or practice in question and entered a formal order adjudicating the particular matter.

Respondent says that each of these arguments is entirely without foundation, that they do violence to the language of the McCarran-Ferguson Act and are in direct conflict with the language, purpose and legislative history thereof; moreover, the Petitioner's theory if adopted would lead to a serious impairment of State regulation.

ARGUMENT

UNDER THE McCARRAN-FERGUSON ACT THE FEDERAL TRADE COMMISSION ACT IS NOT APPLICABLE TO THE BUSINESS OF INSURANCE IN THOSE STATES WHICH HAVE ENACTED LAWS REGULATING UNFAIR AND DECEPTIVE PRACTICES OF INSURANCE COMPANIES.

Introduction

Until 1944 the Supreme Court in a long line of decisions from *Paul v. Virginia* 8 Wall. 168, to *New York Life Insurance Co. v. Deer Lodge County,* 231 U. S. 495, had held that the business of insurance was not commerce, and, therefore, even though it crossed state lines it was not within reach of the commerce clause of the Constitution. Consequently the individual states had, without any restrictions from the Federal government, assumed the responsibility of regulating such business, and, in the course of doing so, had built up a vast amount of experience, laws and regulations. In 1944 the United States Supreme Court in *United States v. South-Eastern Underwriters Ass'n,* 322 U. S. 533, reversed its prior decisions and held that the business of insurance was commerce and that when its activities crossed the state line it was engaged in interstate commerce, and, therefore, subject to Federal regulations, and, specifically, that it was subject to the Sherman Act.

I.

THE PROVISO IN SECTION 2(b) OF THE McCARRAN-FERGUSON ACT CANNOT PROPERLY BE CONSTRUED, AS CONTENDED BY THE PETITIONER, TO MEAN THAT THE FEDERAL TRADE COMMISSION ACT SHALL BE APPLICABLE TO THE BUSINESS OF INSURANCE IN STATES IN WHICH SUCH BUSINESS IS FULLY REGULATED BY STATE LAW IF SUCH LAW IS NOT IN CONFLICT WITH THE FEDERAL TRADE COMMISSION ACT.

A. Language and Purpose of the McCarran-Ferguson Act.

The proviso to Section 2(b) states that after January 1, 1948, the Federal Trade Commission Act "shall be applicable to the extent that such business is not regulated by State law." This language seems both simple and clear. It says that if the matter *is not* regulated by State law the Federal Trade Commission Act is to apply, but if it *is* regulated by State law the Federal Trade Commission Act is not to apply.

There is no language in the proviso which could be construed to require that the State law must be in conflict with the Federal law in order to make the proviso operative. Had Congress intended any such substantial restriction in the proviso it certainly could and would have used language expressing such an intent.

The interpretation requested by Petitioner not only does violence to the express language of the Act but also to the purpose for which it was enacted.

The South-Eastern Underwriters decision not only cast doubt on the validity of the numerous State laws under which the insurance business had been regulated in the past, but also created problems with respect to the various

Federal statutes which pertained to commerce generally but which Congress had adopted without having insurance in mind. Congress enacted the McCarran-Ferguson Act to eliminate this confusion. In Section 1 it declared "that the continued regulation and taxation by the several States of the business of insurance is in the public interest" and in Section 2(a) it made that business subject to the State regulatory laws.

Having expressed in Sections 1 and 2(a) the clear and obvious intent to repose in the several States not only the authority but also the full and complete responsibility for the regulation of this business, Congress wanted to make certain that the business would be regulated within the areas covered by the Statutes named in Section 3(a) and the proviso of Section 2(b) and therefore specifically made the named acts inoperative for a period of three years during which the States could revise their laws to undertake that responsibility and eliminate the possibility of a regulatory void in those areas. To the extent that the States did so, the Federal Acts would not become applicable at the end of the three-year moratorium.

To assume, as the Petitioner apparently does that Congress intended the moratorium as an invitation to the States to adopt only conflicting legislation if they wished to assume full regulatory responsibility is a reflection on the intelligence of Congress. The Federal Trade Commission Act makes unlawful "unfair or deceptive acts or practices in commerce," and the Petitioner frankly admits that "it is inconceivable that any State would enact a Statute affirmatively sanctioning false advertising" (Pet. Br. 37, fn. 24).

If it was Congress' intention, as the Petitioner contends, to grant to the Federal Trade Commission concurrent juris-

diction with the States to enforce its law proscribing unfair or deceptive acts or practices in commerce irrespective of whether or not the States enacted laws regulating such practices, then why was the Federal Trade Commission Act included in the moratorium provided in Section 3 and made inapplicable for a period of three years? Surely Petitioner is not going to contend that on the date of the enactment of the McCarran-Ferguson Act in 1945 any States had laws sanctioning false advertising or in any other way conflicting with the Federal Trade Commission Act and Petitioner concedes that it is inconceivable that they would adopt such a law. Surely if it was the intention of Congress to make the Federal Trade Commission Act applicable to the business of insurance at the end of three years, irrespective of the adoption of similar laws by the States, then surely there would have been no reason for not permitting it to be enforced immediately in both the States which already had similar laws as well as in those which had none. The placing of the Federal Trade Commission under the moratorium is strong proof of Congress' plain intent as expressed in the words of the Act, which was that the Federal Trade Commission Act, as well as the other Acts named, would not become applicable if the States accepted their responsibility by enacting laws regulating the business of insurance in the areas covered by those Acts leaving it entirely up to the several States to determine the method and type of regulation which they considered to be best adapted to their own particular needs.

In the Congressional debates on the McCarran-Ferguson Act,[1] in which the effect of the proviso in Section 2(b) was discussed at great length, in no instance did anyone indicate

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[1] 91 Cong. Rec. 478-488, 1027-1028, 1085-1093, 1395-1396, 1442-1444, 1477-1489.

or imply in any manner that applicability of the Federal Trade Commission Act and the other Acts at the end of the moratorium period would in any way turn on whether the State laws were contrary to or harmonious with the Federal Acts, though the authors and managers of the bill repeatedly made the flat unqualified statement that, under the Section 2(b) proviso, the Federal Trade Commission Act and other acts mentioned would not apply in the areas in which the States have enacted laws.[2]

The Petitioner on page 59 of its Brief quoted a statement made by Senator Ferguson that "if the States were specifically to legislate upon a particular point, and that legislation were contrary to the Sherman Act, the Clayton Act, or the Federal Trade Commission Act, then the State law would be binding," and at page 64 of its Brief it seeks to draw the conclusion that Senator Ferguson meant that only a conflicting State law would make the Federal Acts inapplicable. No such conclusion is justified. Senator Ferguson was merely answering a question addressed to him by Senator Pepper as to what the result would be in the event of the enactment of State laws not in harmony with the Federal laws (91 Cong. Rec. 1481). There is nothing in his reply to indicate the result would be otherwise in case of the enactment of harmonious State laws and Senator Ferguson, like all of the others who spoke on the subject, flatly stated that the meaning of Section 2(b) was that:

> "After the moratorium has expired, if a State has not legislated on the subjects covered by the three acts to which reference has been made, those acts shall be applicable to the business of insurance. *But insofar as the State is concerned which has specifically legislated on the subject, the three acts*

[2] See *infra* page 17 for quotations from Congressional Record.

shall not apply." (Emphasis added.) (91 Cong. Rec. 1443.)

B. The Petitioner's Theory of Dual Control Would Inevitably Result in Conflict Between State and Federal Agencies and Would Impair State Regulation.

Petitioner's claim that the McCarran-Ferguson Act makes a distinction between State legislation conflicting with and State legislation not conflicting with the Federal Trade Commission Act is undoubtedly due to the predicament in which it finds itself after being forced to concede, as it now belatedly does, that in the event of a conflict between a Federal law and a State law pertaining to the business of insurance, the State law would prevail and the Federal law would not become operative (Pet. Br. 23, 37-39, 49, 55). In both *North Little Rock Transportation Company v. Casualty Reciprocal Exchange*, 181 F. 2d 174 (C. A. 8), certiorari denied, 340 U. S. 823, and *Miley v. John Hancock Mutual Life Insurance Company*, 148 F. Supp. 299, affirmed *per curiam*, 242 F. 2d 738 (C. A. 1), certiorari denied, 355 U. S. 828, the courts unequivocably held that under Section 2(b) of the McCarran-Ferguson Act the Sherman Act was inapplicable to insurance business which was regulated by State law. Petitioner while agreeing with the decisions in these cases asserts that they can be distinguished because the State "statute specifically sanctioned the very practice in question" whereas in the case at bar "the state statutes and the federal act are entirely consistent and complementary" and "it is most unlikely that a conflict would ever arise" (Pet. Br. pp. 37-38 and fn. 24, p. 37).

There are two answers to this. First, as we have already demonstrated, the Act itself makes no such distinction.

Second, although the language of the Federal and State laws pertaining to deceptive and unfair practices may be similar in that they both prohibit unfair or deceptive acts or practices, it would indeed be naive and unrealistic to believe that there would not be conflicts in their administration and application to particular facts and circumstances.

In *Federal Trade Commission v. Rubberoid Company*, 343 U. S. 470, 483, Mr. Justice Jackson, in a dissenting opinion, described with great clarity the scope and extent of the broad authority delegated to administrative agencies to interpret and administer such complicated and vague regulatory acts as the Federal Trade Commission Act. The following are but a few short excerpts:

> Page 483—"By the Act, nothing is commanded to be done or omitted unconditionally and no conduct is per se punishable."
>
> Page 484 —"It is typical of instances where Congress cannot itself make every choice between possible lines of policy."
>
> Page 486—"The Congress is not able or willing to finish the task of prescribing a positive and precise legal right or duty by eliminating all further choice between policies, expediencies or conflicting guides, and so leaves the rounding out of its command to another, smaller and specialized agency.
>
> "It is characteristic of such legislation that it does not undertake to declare an end result in particular cases but rather undertakes to control the processes in the administrator's mind by which he shall reach results. Because Congress cannot predetermine the weight and effect of the presence or absence of all of the competing considerations or conditions which should influence decisions regulat-

> ing modern business, it attempts no more than to indicate generally the outside limits of the ultimate result and to set out matters about which the administrator must think when he is determining what within those confines the compulsion in a particular case is to be."

This description of the functions of the Federal Trade Commission of course applies equally to the State agencies charged with administering similar State statutes, and the Petitioner so concedes (Pet. Br. 54). When Congress enacted the McCarran-Ferguson Act and invited the several States to enact their own laws regulating insurance in the area covered by the Federal Trade Commission Act, it was obviously authorizing them to set up similar administrative agencies and thereby assume the full responsibility and functions of that Commission in the area of unfair and deceptive practices in connection with the business of insurance. The States have admittedly enacted such statutes and set up such agencies. They have fully and completely taken over the responsibility entrusted to them by Congress and only Congress has the authority to take it back.

The Petitioner concedes that the intent and meaning of the McCarran-Ferguson Act is that the Federal Trade Commission Act cannot "be applied so as to override state policy specifically expressed either in statutes *or administrative action*" (Pet. Br. 39).

In an area as broad and vague as the regulation of unfair and deceptive practices, it is inconceivable that the Petitioner can seriously contend that there would be no conflict between the administration of the Federal Act and the various State Acts. In Petitioner's brief filed with the Court of Appeals for the Sixth Circuit he frankly stated at page 71:

> "A State might conceivably hold that some of [respondent's] advertising practices found by the Commission to be false and misleading do not violate the State statute. To this extent a conflict *might* arise between the administration of the Federal Trade Commission Act and the administration of the State statute."

Petitioner devotes a whole section of its brief to this Court to the argument that there is no conflict between the State and Federal laws "either in the Statutes themselves or in their administration" (Pet. Br. 35-41), but then in another section of his brief he casts doubt on the sincerity of his whole argument by stating that "Presumably conventional rules of *res judicata* would eliminate any possibility of conflicting judgments or orders" (Pet. Br. 50, fn. 32).

In *Garner v. Teamsters, Chauffeurs and Helpers, Etc.*, 346 U. S. 485, 490-491, this Court said:

> "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

The two actions which are being jointly heard on this appeal themselves demonstrate the probability of conflict in interpretation, for in both cases the Commission found certain advertising to be unfair and deceptive which the examiner had found to be not unfair or deceptive (Pet. Br. 9, 11, 13-15).

Under the Petitioner's theory there could be no conflict in the dual administration of the State and Federal laws unless and until the State took formal action and entered a final order adjudicating the fairness or unfairness of each and every piece of advertising or literature used by an insurance company. This of course would not only seri-

ously impair and conflict with the right of the States to enforce its Statute and regulate unfair and deceptive advertising by other than formal proceedings and adjudications, but also overlooks the possibility that the State agency has examined the material and concluded that it is not unfair or deceptive. Such a dual administration over unfair practices in the business of insurance would not only result in conflict between the State and Federal agencies in the administration of their laws but would also seriously impair the enforcement of the State laws in direct violation of Section 2(b) of the McCarran-Ferguson Act by permitting the Federal Trade Commission to dictate the method and means of enforcement to be used by the States.

In *Prudential Insurance Company v. Benjamin*, 328 U. S. 408, 429-430, this Court, spaking of the McCarran-Ferguson Act, said:

> "Obviously Congress' purpose was broadly to give support to the existing and future State systems for regulating and taxing the business of insurance."

After referring to the existence of State systems of regulation and taxation and to the fact that they differed greatly in scope and character, it then stated:

> "Congress could not have been unacquainted with these facts and its purpose was to throw the whole weight of its power behind the State systems, notwithstanding these variations."

In *Maryland Casualty Company v. Cushing*, 347 U. S. 409, 413, this Court again speaking of the McCarran-Ferguson Act, said:

> "Suffice to say that even a most cursory reading of the legislative history of this enactment makes it clear that its exclusive purpose was to counter-

> act any adverse effect that this Court's decision in *United States v. South-Eastern Underwriters Asso.*, 322 U. S. 533, 88 L. Ed. 1440, 64 S. Ct. 1162 might be found to have on State regulation of insurance."

In *Wilburn Boat Company v. Fireman's Fund Insurance Company*, 348 U. S. 310, 319, this Court said:

> "In the South-Eastern case, however, all the opinions had emphasized the historical fact that States had always been free to regulate insurance. The measure Congress passed shortly thereafter, known as the McCarran Act, was designed to assure that existing State power to regulate insurance would continue."

If the McCarran-Ferguson Act restored to the States the exclusive right to regulate the unfair and deceptive practices of insurance companies only if the State regulations are in conflict with the Federal regulations, then, of course, the Act would not have succeeded in counteracting the adverse effect of the South-Eastern decision, the States would not be restored to the position they were in prior to South-Eastern decision, and the weight of Congress' power would be used to impair and destroy the regulatory systems of the several States in this area rather than to support them.

The Petitioner argues that "there would seem to be no substantial reason why the Federal and State governments should not both have jurisdiction" over the same transaction, and cites cases involving the Federal Power Act to show that complementary regulation is not unusual. They are not in point and do not involve a provision even remotely similar to the proviso contained in the McCarran-Ferguson Act. In fact in the Federal Power Act (16 U. S. C. 791 *et seq.*), as in the Natural Gas Act, (15 U. S. C. 717, *et seq.*), there is an express grant of authority to the Fed-

eral Power Commission over a specific area, and a sharp line of demarcation is drawn between the area occupied by the States and the area occupied by the Federal Power Commission. Under the Federal Power Act and the Natural Gas Act there is no concurrent or dual control imposed on the same transactions as Petitioner claims was intended by Congress under the McCarran-Ferguson Act.

II.

THE PROVISO IN SECTION 2(b) OF THE McCARRAN-FERGUSON ACT CANNOT PROPERLY BE CONSTRUED, AS CONTENDED BY THE PETITIONER, TO MEAN THAT THE FEDERAL TRADE COMMISSION ACT SHALL NOT BE MADE INAPPLICABLE BY THE MERE ENACTMENT OF STATE REGULATORY LAWS PERTAINING TO UNFAIR AND DECEPTIVE PRACTICES OF INSURANCE COMPANIES, BUT SHALL REMAIN APPLICABLE UNTIL THE STATE LAW IS APPLIED AND ENFORCED IN A PARTICULAR SITUATION BY THE ENTRY OF AN ORDER ADJUDICATING THE MATTER.

Petitioner's final argument is that when Congress inserted the proviso in Section 2(b) of the McCarran-Ferguson Act that "the Federal Trade Commission Act, as amended, is not applicable to the business of insurance to the extent that such business is not regulated by State law," they did not intend that the several States could make the Federal Trade Commission Act inapplicable by merely enacting laws regulating unfair and deceptive practices in the business of insurance, but on the contrary intended that the Federal Trade Commission Act would remain applicable to any act or practice which the Federal Trade Commission considered to be unfair or deceptive until such time as the several States took formal action pertaining to the particular act or practice in question and entered formal

orders thereon adjudicating the particular matter (Pet. Br. 24-27, 49-55, and fn. 32, p. 50).

A. Language and Purpose of the McCarran-Ferguson Act.

The first answer to this is that the language of the proviso, which is both plain and simple, says no such thing. How can the words "regulated by State law" be construed to mean anything other than the enactment by the several States of laws regulating insurance companies? And, of course, the word "extent" refers to the area or field occupied by the three acts named which, so far as the Federal Trade Commission Act is concerned, covers the area of unfair and deceptive practices.

In short, Congress said that if unfair and deceptive practices of insurance companies are not regulated by State law the Federal Trade Commission Act is to apply, but if such practices are regulated by State law the Federal Trade Commission Act is not to apply.

The States did proceed to enact laws which Petitioner concedes are virtually identical with the Federal Trade Commission Act (Pet. Br. p. 36). But Petitioner argues that this does not comply with the mandate of Congress and that the insurance business cannot be considered as "regulated by State law" until the State law has been applied and enforced and an order entered in individual cases (Pet. Br. 49-50 and 55).

Congress of course always retains the right to amend the law and return to its own control the regulation of the business of insurance if it feels that the States have not fully assumed and carried out the responsibilities entrusted to them by failure to enforce the regulating laws which they have enacted, but surely there is nothing in the Act

to indicate that they have delegated the authority to make this determination to the Federal Trade Commission.

Although Congressional debates sholud not be resorted to when the meaning is clear from the plain and unmistakable terms of the Statute *(Osaka Shosen Kaisha Line v. United States,* 300 U. S. 98), nevertheless a few short excerpts from Senate debates on the Conference Report on the McCarran-Ferguson Act show conclusively that Congress had in mind specifically the enactment of laws by the states in the areas occupied by the Sherman, Clayton and Federal Trade Commission Acts.

> Senator McCarran: "During the moratorium regulatory acts *must be enacted* by the several States. Otherwise the antitrust acts become effective after January 1, 1948." (Emphasis added.) (91 Cong. Rec. 1442.)
>
> Senator McCarran: "During the three-year moratorium the States may, if they see fit to do so, *enact legislation for the purpose of regulation. If they do enact such legislation,* to the extent that they regulate, they will have taken the business of insurance in the respective States out from under the Sherman Anti-Trust Act, the Clayton Act, and the other Acts. If during the moratorium the States *do not enact legislation for regulatory purposes,* then on January 1, 1948, the Sherman Act, the Clayton Act, and the other Acts will become immediately applicable." (Emphasis added.) (91 Cong. Rec. 1443.)

Similar statements were made by Senator Ferguson and are set forth at page 8 *supra.*

These clear indications of Congressional intent are in direct conflict with the Petitioner's argument that Congress intended anything more than the enactment by the

States of regulatory laws covering the area of the three Acts mentioned, and also with Petitioner's argument that Congress intended that only a conflicting State law would render the Federal Trade Commission Act inapplicable.

B. There Is No Legal Vacuum Under the State Regulatory Laws So Far As Respondent Is Concerned.

Petitioner also argues that unless the Federal Trade Commission is permitted to regulate the interstate activities of insurance companies in the area of unfair and deceptive practices, there would be "a legal vacuum—a 'no man's land' which is not effectively regulated either by the States or by the Federal government" (Pet. Br. p. 43), and that this is necessarily true because a State law is not enforceable beyond its own borders (Pet. Br. 41-49).

In the case at bar the Respondent is not only licensed to do business in every State in which it advertises and sells insurance, but also sells only through agents each of whom resides in and is licensed by the particular State in which he sells insurance. It is also undisputed that each and every one of those States has a law regulating false and deceptive practices in connection with the sale of such insurance. Under these facts what difference can it possibly make whether the advertising or the insurance policy originates elsewhere? The evil of false advertising is its impact on the person purchasing the insurance, and the State in which the policy is purchased is the jurisdiction which can most effectively regulate and control any deceptive practices used by the seller. A State's laws need no extra-territorial application to effectively protect its own citizens from deceptive practices used by an insurance company which must be licensed by the State before it can sell its policies within the State and whose agents handling the sales within the State must also be so licensed.

Under the State laws regulating deceptive practices such licenses can be revoked by the State Insurance Commissioner upon violation of any cease and desist orders pertaining to deceptive practices (Pet. Br. 78-79).

In *Travellers' Health Assn. v. Virginia*, 339 U. S. 643, 652, this Court said:

> "Any doubts about the power of a State to exclude an interstate insurance company which refuses to comply with its regulatory laws, were dispelled by the passage of the McCarran Act."

What type of power or what penalty could be more effective? As Mr. Justice Jackson pointed out in *United States v. South-Eastern Underwriters Ass'n*, 322 U. S. 533, 590-591, fn. 11:

> "Violations of State laws are commonly punishable by cancellation of permission to do business therein—a drastic sanction that really commands respect."

The Petitioner also discusses the problems involved where an insurance company is not itself licensed and does not do business through local agents licensed in the State where its policies are advertised and sold. (Pet. Br. 47-48). We do not discuss those questions because they are not before the Court in the case at bar and have no application to Respondent, which was licensed in all States and sold its insurance only through agents who were also licensed by their respective States. Under the facts in the case at bar the States can, under the laws enacted by them, effectively regulate the business of insurance and deceptive practices pertaining thereto, and all of Respondent's practices are within the jurisdiction and control of such laws.

Petitioner may, of course, if it wishes, question the wisdom of Congress in depriving the Federal Trade Com-

mission of its authority over the business of insurance and favoring exclusive regulation in that area by the several States, but surely a system of dual controls over the same transactions, in the form suggested by Petitioner, was never contemplated by Congress and could only have resulted in the utmost confusion and the complete disintegration of the State regulatory systems. The impossibility of concurrent control by State and Federal authorities over the same subject matter (operation of a railroad) was pointed out by this Court in *Southern Railway Company v. Reid*, 222 U. S. 424, in which the Court said:

> "If the regulation be not exclusive, this situation is presented: If the carrier obey the State law, he incurs the penalties of the Federal law; if he obey the Federal law, he incurs the penalties of the State law. Manifestly one authority must be paramount, and when it speaks the other must be silent."

Under the facts in the instant case, at the invitation of Congress as expressed in the McCarran-Ferguson Act, the States have spoken by the enactment of laws regulating unfair and deceptive practices in the business of insurance, and having so spoken the Federal Trade Commission must be silent.

We submit that type of dual control now proposed by the Federal Trade Commission in which the first agency to issue an order would control is not only in complete variance with the terms of the Act but if accepted would place the whole industry in a state of complete confusion and conflict.

CONCLUSION

For the foregoing reasons, the judgment of the Court below should be affirmed.

Respectfully submitted,

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